

# Designating Lessons

Ontario Heritage Conference  
Stratford/St. Marys  
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# Or....

- Port Dalhousie....7 years later...
- What have we learned?
- What has the OMB learned?
- What have the courts had to say?

And....

How can we ALL do it better?

# Introduction

- *Ontario Heritage Act* – provincial legislation which applies to all municipalities;
- Bill 60 – *An Act to Amend the Ontario Heritage Act*, received Royal Assent in April, 2005.
- Intended to “strengthen and improve heritage protection” in the province.
- Most comprehensive amendments since the Act was first passed in 1974.

# Overview

- Significant changes in the Act:
  - Retroactivity of designation;
  - Restriction on appeal rights from Council decisions;
  - Broader role for CRB;
  - Stronger role for Minister;
  - Property Standards By-laws for heritage properties.

# What is a Heritage Property?

- Applies to the **real property** “and the structures and buildings thereon”
- “**heritage attributes**” are those that contribute to the “**cultural heritage value or interest**” of the property
- Criteria set out in O.Reg. 9/06:
  - “design value or physical value”
  - “historical value or associative value”
  - “contextual value”

# What is a Heritage Property?

- 1. The property has design value or physical value because it,
  - i. is a **rare, unique, representative or early example** of a style, type, expression, material or construction method,
  - ii. displays a high degree of craftsmanship or artistic merit, or
  - iii. demonstrates a high degree of technical or scientific achievement.

# What is a Heritage Property?

- 2. The property has historical value or associative value because it,
  - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is **significant to a community**,
  - ii. yields, or has the potential to yield, information that contributes to an **understanding of a community or culture**, or
  - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is **significant to a community**.
- Who or what is the “community”?

# What is a Heritage Property?

- 3. The property has contextual value because it,
  - i. is important in defining, maintaining or supporting the **character of an area**,
  - ii. is physically, functionally, visually or historically linked to its surroundings, or
  - iii. Is a landmark.

What happens if the “character” is changing?



# Private Property – Public Interest

- Properties are designated because of the broader public interest in knowing and retaining elements of our cultural history;
- Private properties are designated because of their importance to the community;
- What obligation does the community have to the property (and the property owners) once it has been designated?









## Section 27 – Heritage Register

27. (1) The clerk of a municipality shall keep a register of property situated in the municipality that is of cultural heritage value or interest.

(1.2) In addition to the property listed in the register under subsection (1.1), the register may include property that has not been designated under this Part but that the **council of the municipality believes** to be of cultural heritage value or interest and shall contain, with respect to such property, a description of the property that is sufficient to readily ascertain the property.

# Section 27 – Heritage Register

- (3) If property included in the register under subsection (1.2) has not been designated under section 29, the owner of the property shall not demolish or remove a building or structure on the property or permit the demolition or removal of the building or structure **unless the owner gives the council of the municipality at least 60 days notice** in writing of the owner's intention to demolish or remove the building or structure or to permit the demolition or removal of the building or structure.
- (4) Subsection (3) applies **only if the property is included in the register under subsection (1.2) before any application** is made for a permit under the *Building Code Act, 1992* to demolish or remove a building or structure located on the property.



# ***Viner Assets Inc. v. Ottawa (City)***







# What is “significant”?

2.6.1 Significant built heritage resources and significant cultural heritage landscapes **shall be conserved**.

**Built heritage resource:** means a building, structure, monument, installation or any manufactured remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the *Ontario Heritage Act*, or included on local, provincial and/or federal registers.

## ***Viner Assets Inc. v. Ottawa (City)***

- Attempt to balance private property rights and public interest
- Properties not designated and not included within the HCD
- Included on the Heritage Reference List; staff prepared and used document; no Council approval
- Not protected under the OHA or the PPS.

# Designation of Individual Properties

- Part IV of the Act
- Notice of Intention is retroactive “as though the designation process is complete and the property had been designated”;
- Notice to property owner critical element;
- Notice of Objection heard by CRB;
- CRB’s report advisory only;
- Council decision is final.



## ***St. Marys ats Foleys***

- Part IV designation for property on main street
- Reasons for designation reference interior and exterior elements
- “remarkably unchanged” for 100+ years
- Owner benefited through heritage grants granted by Town
- Then disputed notice given by Town and jurisdiction to include interior elements

Constructed in 1884 in  
the Second Empire style

Designed by William  
Williams of St. Marys.

Landmark in the Town  
since its construction.



## Andrews' owner honoured



From left are Mayor Jamie Hahn, Andrews building owner Lynn Foley and Heritage St. Marys member Coun. Bill Osborne. (Macko photo)

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# Interior Elements Included in the Reasons for Designation

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Interior showing west wall cabinets



Wall clock



Interior, Anstett's Jewelry, January 2008  
*Photographs, Heritage St. Marys*

Store is set up in a “princely style”... the “walnut fittings with showcases counters and mirrors are among the finest yet set up in Western Ontario”.



# ***St. Marys ats Foleys***

- Decision of Justice Ashton:
  - Notice was not perfect but the owner had **actual notice**
  - Part IV of the OHA only applies to “**real property**” therefore cannot designate elements which are not real property
  - “interior features” are **not chattel but fixtures** therefore considered part of the real property
  - Designation stands
  - Court of Appeal hearing in June/16 – stay tuned!

# Restriction on Appeal Rights – Individually Designated Properties

- For designations, repeals of designations & applications to alter:
  - a referral to the CRB for a hearing;
  - CRB then reports to Council;
  - Council, after considering CRB report renders final decision;
  - No requirement of subsequent hearing;
  - **No appeal to OMB.**
- Note: the right to appeal a decision re: **demolition** remains.